

Internal Revenue Service
District Director

Department of the Treasury

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:

EP/EO

Employer Identification Number:

Date: NOV 02 1995

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(12) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

District Director

Enclosures: 3
c.c.

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Information submitted indicates that you were incorporated on [REDACTED], in the state of [REDACTED]. Your purposes as stated in your Articles of Incorporation are to provide for (i) the administration and enforcement of the covenant contained in the Declaration, and (ii) the ownership, operation, maintenance, repair and replacement of the Common Facility Easements and the Common Facilities located in [REDACTED].

Your Articles of Incorporation state that you shall have two (2) classes of members. The two classes of member are as follows:

Class A Members. The only Class A member of the Corporation shall be [REDACTED], a [REDACTED] corporation (the "Developer"), or any successor in interest or assign which is expressly designated as a successor Developer in an instrument executed by the preceding Developer and recorded in the Office of the Recorder of [REDACTED] County, [REDACTED]. Class A Membership shall terminate, and there shall be no Class A Member, upon the date the undeveloped acreage in the Park is less than ten percent (10%) of that portion of the Real Estate remaining after excluding the acreage of all Common Facilities Easements and dedicated right of ways. For such purpose, the term "undeveloped acreage" shall mean and refer to Parcels within the Park without completed buildings and related improvements constructed in accordance with the plans and specifications approved therefore by the Architectural Control Committee. Upon termination the Class A membership, the Developer shall automatically become a Class B Member of the Corporation provided that the Developer then owns a User Specific Parcel.

Class B Members. Any person, partnership or corporation or other entity owning a User Specific Parcel within the Park shall be a Class B Member of the Corporation; provided however, that the Developer shall not be a Class B Member until such date that the Class A Membership terminates, and upon the date of such termination, the Developer shall automatically become a Class B Member provided that the Developer then owns a User Specific Parcel.

All Members of each Class shall have the same rights, privileges, duties, liabilities, limitations and restrictions as the other Members of such Class. Membership assessments are determined annually by the Board of Directors based upon their adoption of an annual budget of projected cost for the year.

Information submitted with the application indicates that your activities consist of maintaining the common grounds for the mutual benefit of the businesses in the [REDACTED] Area. This includes (1) removal of debris from common area, (2) snow removal from common streets, (3) maintenance of common landscaping including fertilization, mowing, watering, weeding, trimming and mulching and (4) providing street lighting and other security services for the common area.

Section 501(c)(12) of the Internal Revenue Code provides exemption from Federal income tax for: "Benevolent life insurance associations of purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consist of amounts collected from members for the sole purpose of meeting losses and expenses.

Exemption as a "like organization" is restricted to organizations which are similar to any one type of organizations described in the above paragraph.

In New Jersey Automobile Club v United States, 181 Fed Supp. 259 (1960), certiorari denied, 366 U.S. 964 (1960), it was held that an automobile club was not exempt from Federal income tax under section 101(10) of the Internal Revenue Code of 1939, which corresponds to section 501(c)(12) of the 1986 Code.

The court stated that it felt Congress intended to exempt organizations which were "like benevolent life insurance associations of a purely local character", or like "mutual or cooperative telephone companies". Even though activities are mutually beneficial, Congress did not intend for an automobile club to be included in the term "like organization".

In Consumers Credit Rural Electric Cooperative Corporation v. Commissioner, 37 T.C. 136 (1961), it was held that an organization formed by exempt rural electric cooperatives to finance purchases of electrical, water, or plumbing appliances by customers of the cooperatives was not exempt as a "like organization".

The fact that the member cooperatives qualified under the statute did not automatically confer tax exemption upon the organization which, in order to obtain tax exemption, also has to qualify under the statute. The instant organization's activities are not similar to those customarily performed by a benevolent life insurance association, or a mutual ditch or irrigation company, or a mutual or cooperative telephone company, and consequently does not qualify for exemption as a "like organization" under section 501(c)(12) of the Code.

The same idea with respect to the term "like organization" also applies in the case of a cooperative organization which operates and maintains a housing development and provides housing facilities and maintenance services on a cooperative basis for the benefit of its tenant-owner members. In Commissioner v. Lake Forest, Inc., 305 Fed. (2d) 814 (1962), the court stated: "We think the argument for exemption of Lake Forest, Inc. as a 'like organization' to 'benevolent life insurance associations of a purely local character' under Int. Rev. Code of 1939, sec. 101(10) and Int. Rev. Code of 1954, section 501(c)(12)....is altogether meritless".

In Revenue Ruling 67-265, 1967-2 C.B. 205, the Service held that an association which was formed to acquire, establish and maintain a light and water distribution system for its members on a cooperative basis may qualify for exemption under section 501(c)(12) of the Code.

Furnishing light and water is a type of public utility service similar in nature to that provided by the specified organizations under section 501(c)(12) of the Code. Therefore, the instant organization is exempt as a "like organization" under section 501(c)(12) of the Code.

In Revenue 57-420, 1957-2 C.B. 308, an organization which provided and maintained a two-way radio system for its members on a mutual or cooperative basis qualified for exemption under section 501(c)(12) of the Code. The rationale for exemption is that the instant organization is similar to mutual or cooperative telephone company in that a two-way radio communication system on a mutual basis is an organization whose purpose and activities are similar in nature to a mutual telephone company.

The issue concerning your qualification for exemption is whether this organization is a "like organization" within the meaning of section 501(c)(12) of the Code.

The term "like organization" as used in the statute is limited by the types of organizations specified in the statute. It is applicable only to those mutual or cooperative organizations which are engaged in activities similar to the benevolent life insurance or public utility types of service.

While your activities may be mutually desirable, and may be performed individually by the members as an incident to their customary and primary function, such services and activities are not similar in nature to those customarily performed by a benevolent life insurance association, or a mutual ditch or irrigation company, or a mutual or cooperative telephone company.

Accordingly, you are not a "like organization" and do not qualify for exemption from Federal income tax under section 501(c)(12) of the Code.